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Attorneys for Defendants  
COUNTRYWIDE HOME LOANS, INC.,  
COUNTRYWIDE FINANCIAL CORPORATION,  
BANK OF AMERICA CORPORATION,  
MICHAEL COLYER, and KEN LEWIS

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

SALMA MERRITT AND DAVID MERRITT,

Plaintiffs,

v.

COUNTRYWIDE FINANCIAL  
CORPORATION; COUNTRYWIDE HOME  
LOANS, INC.; ANGELO MOZILO; DAVID  
SAMBOL; MICHAEL COLYER; DOE 1; DOES  
2-100, inclusive; BANK OF AMERICA; KEN  
MR. LEWIS; WELLS FARGO; JOHN  
STUMPF; JOHNNY CHEN; JOHN BENSON,

Defendants.

Case No. C09 01179 JW

**OBJECTIONS TO PLAINTIFFS'  
REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF OPPOSITION TO  
MOTION TO DISMISS SECOND  
AMENDED COMPLAINT**

Date: October 5, 2009  
Time: 9:00 a.m.  
Ctvm: 8

Date Action Filed: March 18, 2009  
Trial Date: Not set

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Defendants Countrywide Financial Corporation, Countrywide Home Loans, Inc., Michael Colyer, Bank of America Corporation, and Ken Lewis (collectively, “Defendants”) object to each of the exhibits attached Plaintiffs’ Requests for Judicial Notice in Support of their Opposition to Defendants’ Motion to Dismiss the Second Amended Complaint:

- Original Blank and Missing Loan Documents
- *In Re Countrywide Financial Corp. Mortgage Marketing and Sales Practices Litigation*, Lead Case No. 3:08-md-01888-DMS-LSP (S.D. Cal. Mar. 6, 2009)
- Audit Reports by Charles J. Horner and Forensic Loan Auditors LLC

Plaintiffs’ request for judicial notice of these exhibits is improper. None of these exhibits cite to facts of which the Court make take judicial notice.

First, Plaintiffs request that the Court take judicial notice of Plaintiffs’ unsigned loan documents in order to establish that Defendants prevented Plaintiffs “from knowing that they had a right to cancel or know that they were being overcharged.” (Aug. 26, 2009 Opp. at 5:19-24.) A review of Plaintiffs’ unsigned loan documents does not assist this Court in ruling on the pending Motions to Dismiss. Rather, these documents establish that Plaintiffs received unsigned copies of their loan documents and then signed them, as alleged in the SAC. (*See* SAC, ¶ 142.) Thus, judicial notice is improper.

Second, Plaintiffs request that the Court take judicial notice of a case in the Southern District of California, *In Re Countrywide Financial Corp. Mortgage Marketing and Sales Practices Litigation*, Lead Case No. 3:08-md-01888-DMS-LSP (S.D. Cal. Mar. 6, 2009). Plaintiffs seek to use this case to demonstrate that Defendants are liable for, among other things, fraud and conspiracy. (Aug. 26, 2009 Opp. at 4:23-5:14.) Such a request is prejudicial and improper.

Allegations of prior lawsuits and similar losses are irrelevant, prejudicial, and immaterial, and should be stricken from a complaint. *See Murphy v. Kirkeby*, 9 F.R.D. 725, 725 (S.D.N.Y. 1949) (striking allegations of evidence of prior similar losses, even though they might become admissible upon trial, as irrelevant, unnecessary, and prejudicial); *see also Corrections USA v.*

*Dawe*, 504 F. Supp. 2d 924, 930 (E.D. Cal. 2007) (explaining that allegations in pleading may be stricken where they “have no possible relation to the controversy, and may cause prejudice to one of the parties”); *LeDuc v. Kentucky Central Life Ins. Co.*, 814 F. Supp. 820, 830 (N.D. Cal. 1992) (stating that “allegations supplying background or historical material or other matter of an evidentiary nature will not be stricken unless unduly prejudicial to defendant”). Here, if Plaintiffs included such allegations in the SAC itself, Defendants would request that the Court strike such prejudicial allegations. Thus, this Court should not take judicial notice of the requested document for the same reason – factual allegations and findings in other lawsuits relating to the same parties are extremely prejudicial and irrelevant. The only relevant facts in the instant action are those relating to Plaintiffs and their loans.

Third, Plaintiffs request that the Court take judicial notice of audit reports by Charles J. Horner and Forensic Loan Auditors LLC. Federal Rule of Evidence 201 allows judicial notice only of facts that are capable of accurate and ready determination. Here, Plaintiffs request that the Court take judicial notice of reports by *paid consultants* in order to demonstrate TILA violations and improper disclosures for their loans. (Aug. 26, 2009 Opp. at 18:18-27; 20:7-14.) A fact is hardly capable of accurate and ready determination when one is relying on opinions for which one of the parties paid almost \$500. (See <http://thedoceaminer.com/contactandfees.htm>; <http://www.forensicloanauditing.com/individual.html>.) Thus, judicial notice is improper.

For these reasons, Defendants respectfully request that the Court deny each of Plaintiffs’ Requests for Judicial Notice.

Dated: September 21, 2009

**BRYAN CAVE LLP**

By: /s/ Stephanie A. Blazewicz  
 Stephanie A. Blazewicz  
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